

REMARKS***Response to Amendment***

Claims 1-6 and 9-20 are pending in this Office Action. Claims 1-6 and 9-20 are rejected. Claim 1, 4, 9 and 15 have been amended. No new subject matter has been added. Claims 1-6 and 9-20 remain pending. Reconsideration of the claims is respectfully requested in light of the following remarks.

Claim Rejections – 35 USC § 103

Claims 1-6 and 9-20 are rejected under 35 USC 103(a) as being unpatentable over U.S. Pat. No. 5,918,020 to Blackard et al (“Blackard”) in view of U.S. Pat. No. 6,360,271 to Schuster (“Schuster”).

Blackard discusses a data processing system and method for pacing information transfers in a communication network. Pacing allows a client to pace a streaming server in a stable way such that a fill level of a client buffer will oscillate around a single threshold value. To accomplish this, Blackard involves a client *using* transmitted data at a slightly lower rate than the data is received, and when buffers in the client reach a threshold level, the client provides a pace message to the server so the server can withhold sending data and pace the client buffer to stay near the threshold level.

Put differently, Blackard discusses a streaming server that simply transmits data at a slightly faster rate *than it was encoded*, and a client device that uses the transmitted data at a second rate (the rate the data was encoded), and when a buffer is filled in the *client*, the client sends a pace message to the server to stop sending data for a brief period [column 5, lines 26-35]. Therefore Blackard involves a pacing mechanism that is utilized during playout at a client device.

Claim 1 as amended involves a server that in part requires:

a second buffer in the burst path for buffering data from the source, and for transmitting the buffered data to the client at the burst rate before playout at the client.

Claim 1 therefore requires a second buffer in the server to be used to reduce startup time, and the claim as amended explicitly states it occurs before playout at the client, that is, during startup. Blackard does not teach this second buffer and in fact teaches away from it. Blackard states its push model pacing approach schedules real-time data at a relatively fixed rate which in turn “greatly reduces” state machine requirements of the server. And

furthermore, the state machine and buffer management complexities of the server are greatly reduced from those of the prior art [column 3, line 64 - column 4 line 13].

Schuster is directed towards a system for dynamic jitter buffer management based on synchronized clocks. Schuster does not disclose a second buffer in the server to be used to reduce startup time. Schuster therefore does not cure the deficiencies of Blackard, and claim 1 is therefore patentably distinguishable over the prior art. Claims 2-6 depend from claim 1. Since dependent claims necessarily contain the limitations of claims from which they depend, claims 2-6 are also patentably distinguishable over the prior art.

As amended, claim 9 requires a server for retransmitting streaming media to a network comprising:

- means for receiving a first portion of the streaming media from a source along a first path;

- means for outputting the first portion to a client on the network through the first path at a first rate;

- means for receiving a second portion of the streaming media from the source along a second path distinct from the first path at least in part; and

- means for transmitting the second portion to the client on the network through the second path at a second rate lower than the first rate.

As discussed above, Blackard discusses sending data at a higher rate than it was encoded, and decoding that data at a client at a slower rate than it is sent. When a buffer fills at the client, the client sends a pace message to the server and the server withholds sending data for a period of time sufficient to drop the client buffer utilization [column 5, lines 26-35].

Therefore, the server only transmits data at one rate, or not at all, the second rate discussed in Blackard is for the client to decode the data. Blackard does not teach or suggest means for buffering a first portion of a streaming media and outputting the buffered first portion to a client on the network through the first path at a first rate before playout at the client.

Schuster is directed towards a system for dynamic jitter buffer management based on synchronized clocks. Schuster does not disclose means for buffering a first portion of a streaming media and outputting the buffered first portion to a client on the network through the first path at a first rate before playout at the client. Schuster therefore does not cure the deficiencies of Blackard, and claim 9 is therefore patentably distinguishable over the prior art. Claim 15, as amended, contains similar limitations as claim 9 but in method form and is therefore patentably distinguishable over the prior art in similar fashion.

Regarding claims 10-14 and claims 16-20, as stated above, Schuster does not cure the deficiencies of Blackard. Since dependent claims contain the limitations of claims from which they depend, claims 10-14 and 16-20 are also patentably distinguishable over the prior art.

For the foregoing reasons, reconsideration and allowance of claims 1-6 and 9-20 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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